

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1436 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 4-3-12-3, AS AMENDED BY P.L.58-2002,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2004]: Sec. 3. The corporation, after being certified by the
6 governor under section 1 of this chapter, may **do the following:**
7 (1) Establish programs to identify entrepreneurs with marketable
8 ideas and to support the organization and development of new
9 business enterprises, including technologically oriented enterprises.
10 (2) Conduct conferences and seminars to provide entrepreneurs
11 with access to individuals and organizations with specialized
12 expertise.
13 (3) Establish a statewide network of public, private, and
14 educational resources to assist the organization and development
15 of new enterprises.
16 (4) Operate a small business assistance center to provide small
17 businesses, including minority owned businesses and businesses
18 owned by women, with access to managerial and technical
19 expertise and to provide assistance in resolving problems
20 encountered by small businesses.
21 (5) Cooperate with the Indiana business modernization and
22 technology corporation, other public and private entities, including
23 the Indiana small business development network and the federal
24 government marketing program, in exercising the powers listed in

subdivisions (1) through (4).

(6) Establish and administer the small and minority business assistance program under IC 4-3-16.

(7) Approve and administer loans from the enterprise development fund established under IC 4-3-13. ~~and~~

(8) Coordinate state-funded programs that assist the organization and development of new enterprises.

(9) Administer the small business surety bond program established by IC 4-4-32.

SECTION 2. IC 4-4-32 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 32. Small Business Surety Bond Program

Sec. 1. As used in this chapter, "contract term" includes:

- (1) the maintenance or warranty period required by a contract entered into by a principal; and**
- (2) the period during which the surety may be liable for latent defects.**

Sec. 2. As used in this chapter, "corporation" refers to the Indiana small business development corporation established under IC 4-3-12.

Sec. 3. As used in this chapter, "principal" means a small business entity that has assets, income, or employees that do not exceed limits established by the corporation.

Sec. 4. As used in this chapter, "program" refers to the small business surety bond program established by section 6 of this chapter.

Sec. 5. As used in this chapter, "fund" refers to the small business surety bond fund established by section 7 of this chapter.

Sec. 6. (a) The small business surety bond program is established.

(b) The purposes of the program are the following:

- (1) To assist socially or economically disadvantaged persons to obtain working capital that is adequate to begin, continue, and complete projects, the majority of funding for which is provided by government entities or utilities.**
- (2) To encourage socially or economically disadvantaged persons to seek government and other contracts.**
- (3) To encourage financial institutions to make loans to socially or economically disadvantaged persons.**
- (4) To assist small businesses that, because they do not meet the established credit criteria of financial institutions, are unable to obtain adequate business financing on reasonable**

terms through normal financing channels.

Sec. 7. (a) The small business surety bond fund is established for the purposes of the program.

(b) The fund consists of the following:

(1) Money appropriated by the general assembly to the fund.

(2) Premiums, fees, and other money received by the corporation with respect to bonding assistance provided by the corporation under the program.

(3) Proceeds designated by the corporation from the sale, lease, or other disposition of property or contracts held or acquired by the corporation.

(4) Any other money made available under the program.

(c) The fund shall be administered by the corporation.

(d) The expenses of administering the fund shall be paid from money in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 8. (a) Subject to the restrictions of this chapter, the corporation, on application, may guarantee a surety up to the lesser of ninety percent (90%) or nine hundred thousand dollars (\$900,000) of its losses incurred under a bid bond, a payment bond, or a performance bond on a contract, the majority of the funding for which is provided by the federal government, the state, a local government, or a utility regulated by the Indiana utility regulatory commission.

(b) The term of a guaranty under this section may not exceed the contract term.

(c) The corporation may vary the terms and conditions of the guaranty from surety to surety, based upon the corporation's history of experience with that surety and upon any other factor that the corporation considers relevant.

Sec. 9. (a) The corporation may execute and perform bid, performance, and payment bonds as a surety for the benefit of a principal in connection with a contract, the majority of the funding for which is provided by the federal government, the state, a local government, or a utility regulated by the Indiana utility regulatory commission.

(b) The bonds described in subsection (a):

(1) may not exceed seven hundred fifty thousand dollars (\$750,000) each; and

(2) are subject to the approval of the corporation, based on the bond worthiness of the principal as determined by the corporation on review of the principal's application.

Sec. 10. The monetary limit set forth in section 8 or 9 of this chapter does not apply if the sources of funding for the bonds are grants.

Sec. 11. (a) The corporation may not approve a guaranty or a bond under this chapter unless the corporation considers the economic impact of the contract for which the issuance or guaranty of a bond is sought to be substantial.

(b) To determine the economic impact of a contract, the corporation may consider the following:

(1) The amount of the guaranty obligation.

(2) The terms of the bond to be guaranteed.

(3) The number of new jobs that will be created by the contract to be bonded.

(4) Any other factor that the corporation considers relevant.

Sec. 12. Upon application of a principal, the corporation may establish a surety bonding line to issue or guarantee multiple bonds to a principal within preapproved terms, conditions, and limitations.

Sec. 13. (a) To qualify for a surety bond or guaranty under the program, a principal must satisfy the corporation as to all the following:

(1) That the principal is of good moral character, or if the principal is not an individual, that the principal is owned by individuals of good moral character.

(2) As determined from creditors, employers, and other individuals who have personal knowledge of the principal, that the principal has a reputation for financial responsibility, or if the principal is not an individual, that a majority of the principal is owned by individuals with a reputation for financial responsibility.

(3) That the principal is a resident of Indiana or has its principal place of business in Indiana.

(4) That the principal is unable to obtain adequate bonding on reasonable terms through normal channels.

(b) The principal must certify to the corporation and the corporation must be satisfied that:

(1) a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor;

(2) a bond is not obtainable on reasonable terms and conditions without assistance under the program; and

(3) the principal will not subcontract more than seventy-five percent (75%) of the dollar value of the contract.

Sec. 14. (a) To apply for financial assistance from the program, a principal and, where applicable, a surety must submit an application to the corporation on a form provided by the corporation.

(b) An application must include the following information:

(1) A detailed description of the project.

(2) An itemization of known and estimated costs.

(3) The total amount of investment required to perform the contract.

(4) The funds available to the principal for working capital.

(5) The amount of bonding assistance sought from the corporation.

(6) Information that relates to the inability of the principal to obtain adequate bonding on reasonable terms through normal channels.

(7) Information that relates to the financial status of the principal, including the following:

(A) A current balance sheet.

(B) A profit and loss statement.

(C) Credit references.

(8) A schedule of all existing and pending contracts and the current status of each contract.

(9) Any other information the corporation considers relevant.

(c) An application must be affirmed by the applicant under the penalties for perjury.

(d) After receiving an application for assistance from the program, the corporation may determine that a principal must provide an audited balance sheet before the corporation makes its decision on the application.

(e) If a principal has ever defaulted on a guaranty provided by the corporation, the corporation may approve a guaranty or bond if:

(1) two (2) years have elapsed since the time of the default; and

(2) the principal has cured the default.

Sec. 15. (a) The corporation may, in its sole and absolute discretion, set the premiums and fees to be paid by the principal to the corporation for providing bonding assistance under the program.

(b) The premiums and fees set by the corporation shall be payable in the amounts, at the time, and in the manner that the corporation, in its sole and absolute discretion, requires.

(c) The premiums and fees need not be uniform among transactions, and may vary in amount:

(1) among transactions; and

(2) at different stages during the terms of transactions.

(d) A determination by the corporation remains effective throughout the period during which the bonding assistance provided by the corporation is in effect."

Page 1, between lines 11 and 12, begin a new paragraph and insert:
"SECTION 4. IC 4-13-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 17. Bonding for Historically Underutilized Businesses

Sec. 1. This chapter applies to a contract covered by any of the following:

(1) IC 4-13.6.

(2) IC 5-16.

(3) IC 8-23-9.

Sec. 2. As used in this chapter, "historically underutilized business" refers to a business that satisfies all of the following:

(1) The business is a small business.

(2) The business is a for-profit corporation, sole proprietorship, partnership, or joint venture.

(3) More than fifty percent (50%) of the shares of stock or other equitable securities of the small business are owned by one (1) or more individuals who are either of the following:

(A) A member of a minority group (as defined in IC 4-13-16.5-1).

(B) A woman.

Sec. 3. As used in this chapter, "small business" means an entity that qualifies as a small business under 13 CFR 121 (as in effect on January 1, 2004).

Sec. 4. A contract to which this chapter applies may not require a contractor or subcontractor to obtain a surety bond from any specific insurance or surety company, agent, or broker.

Sec. 5. To the extent consistent with law, a contract to which this chapter applies may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for a project under a negotiated arrangement.

Sec. 6. (a) The department of insurance shall establish a program to provide surety technical assistance services to benefit

- 1 **historically underutilized businesses.**
- 2 **(b) The department may contract with insurance companies,**
- 3 **surety companies, agents, or brokers to implement the program.**
- 4 **(c) The following shall assist the department of insurance in the**
- 5 **establishment and implementation of the program:**
- 6 **(1) The Indiana department of administration.**
- 7 **(2) The Indiana department of transportation."**
- 8 Renumber all SECTIONS consecutively.
 (Reference is to HB 1436 as printed January 30, 2004.)

Representative Crawford